

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 5829 of 2006

OMPRAKASH SONI
V/S
THE A.D.J.NO.1, UDAIPUR & ANR.

Mr. SANDEEP SHAH for Mr. PRADEEP SHAH, for the
appellant / petitioner

Mr. PC SINGHVI, for the respondent

Date of Order : 4.10.2007

HON'BLE SHRI N P GUPTA, J.

ORDER

Heard learned counsel for the petitioner.

Perused the impugned order.

By the impugned order, the learned lower Appellate
Court has dismissed the application under O. 41 Rule 25 and
Order 14 Rule 5 C.P.C.

Learned counsel for the respondent made available
for my perusal the statements of the witnesses including
that of the plaintiff, and the defendant, and I find that
the evidence has already been led by the parties in
accordance with the pleadings taken in the litigation.

In that view of the matter, it is always open to
the Court, the learned trial court, or even the learned
lower Appellate Court to frame, or re-frame issues while

deciding the matter, and therefore, notwithstanding the impugned order, it will be open to the learned lower Appellate Court if it so thinks appropriate to frame additional issue, and decide the appeal on merits on the basis of the material available on record.

The writ petition is accordingly dismissed.

(N P GUPTA), J.

/Sushil/